

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

**ADMINISTRATIVE LAW JUDGE’S RULING  
DENYING THE MOTION OF INDUSTRIAL USERS  
TO MODIFY PROCEDURAL SCHEDULE**

On April 4, 2002, a joint motion was filed by the Energy Producers and Users Coalition (EPUC), California Industrial Users, California Large Energy Consumers Association, California Manufacturers and Technology Association, and Kimberly-Clark Corporation (collectively, the “Industrial Users”). The motion seeks modification of the procedural schedule as set in the March 29, 2002 Administrative Law Judge’s Ruling Setting Procedural Schedule for Direct Access Cost Responsibility Phase (Ruling).

By a separate ruling dated April 5, 2002, the response period to the motion was shortened to April 10, 2002. Responses to the motion were filed by San Diego Gas & Electric Company (SDG&E), by The Utility Reform Network

(TURN), jointly by the Alliance for Retail Energy Markets (AReM) and the Western Power Trading Forum (WPTF), and by the California Farm Bureau Federation (Farm Bureau).

### **Parties' Positions**

Industrial Users seek to defer the date for the filing of legal briefs until after the conclusion of evidentiary hearings. The March 29 Ruling directed parties to submit legal briefs on April 22, 2002 addressing the Commission's authority to impose cost responsibility fees associated with (1) the costs of power by the Department of Water Resources (DWR) for direct access customers as well as (2) the responsibility of direct access customers for the "full range of costs" related to generation procurement. Industrial Users argue that although legal briefs parties are to submit legal briefing on April 22, 2002 on the two issues noted above, parties' proposals on the nature and magnitude of the "full range of costs" will not be filed until May 13, 2002 in parties' testimony. The Industrial Users argue that "[t]o ensure a sufficiently thorough examination of the legal issues, all parties must be able to, first, identify with precision the costs to be considered and, second, place those costs in the context of a concrete proposal that describes the structure of the exit fee or its applicability." (Motion at 2.)

The movants therefore propose to brief all legal issues at the end of the now-scheduled evidentiary hearings. Alternatively, the movants recommend that the legal briefs due on April 22, 2002 address only the question of "whether the Commission has authority to impose a fee on Direct Access customers for DWR costs." (Motion at 2-3.)

SDG&E takes no position on whether legal briefing with respect to the DWR costs occurs on April 22 or at the close of the proceeding. However, with respect to the briefing of the Commission's authority to impose exit fees derived

from *other than* DWR-related costs, SDG&E agrees with that that briefing should occur after the conclusion of evidentiary hearings. SDG&E argues that the currently undetermined “other costs,” now within the scope of this case, may be identified before or during hearings, and thus a full and fact-specific legal discussion about those “other costs” can occur only after hearings conclude. SDG&E agrees with the movants that parties need to review all proposals concerning the “other costs” and only then evaluate the Commission’s authority to determine cost responsibility for the particular types of costs presented for consideration.

TURN does not object to deferral of the briefing schedule so long as the Commission holds to the expedited briefing schedule and commits to consolidating all non-DWR surcharges in a second phase of this proceeding. TURN strongly urges the Commission to consider all relevant categories of cost responsibility in this proceeding. As argued in its application for rehearing of D.02-03-055, TURN believes that direct access customers must be assessed for a variety of fully compensatory surcharges that include, but are not limited to, DWR costs. TURN argues that consideration of these cost components should not be “balkanized” between various proceedings but must, to the greatest extent possible, be consolidated in one case.

AReM and WPTF support the motion to defer the entire briefing schedule, but are prepared to submit a pre-hearing brief on the narrow issue of the legality of direct access surcharges designed to recover costs incurred by DWR. AReM and WPTF argue, however, that they cannot effectively comment on “all relevant legal issues” relating to charges designed to recover other costs before learning what costs are at issue and the methodologies proposed for recovering those costs.

AReM and WPTF understand the Commission's desire to resolve expeditiously any issues relating to the legality of direct access surcharges designed to recover DWR costs, given that the Commission has committed to develop such fees as an alternative to adopting a date earlier than September 20, 2001 for the suspension of the right of end use customers to acquire direct access service.<sup>1</sup> They argue, however, that the Commission's decision to reject an earlier suspension date, however, has no direct bearing on the recovery of non-DWR costs.

California Farm Bureau Federation opposes the motion, arguing that even if the full range of costs are not fully discussed at this stage, there is value to be gained from at least partly identifying the parameters of parties' positions, thereby moving the Commission closer to resolving the issue of cost responsibility for direct access customers. Farm Bureau supports the current briefing schedule that, as a minimum, requires parties to address the enforceability of cost responsibility charges for generation procurement, such as DWR costs, URG-related procurement costs. Farm Bureau argues that even if every eligible cost is not identified at this stage of the briefing process, further opportunity for briefing of legal issues can be provided to the extent new categories of costs are subsequently identified.

## **Discussion**

The motion of the Industrial Users is denied. Parties are directed to comply with the March 29<sup>th</sup> ALJ Ruling, as discussed under the heading:

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<sup>1</sup> See Decision ("D.") 02-03-055, *mimeo*, at 14.

“Briefing of Legal Basis for Direct Access Cost Responsibility Charges” and as further prescribed in the April 5<sup>th</sup> ruling clarifying the scope of legal briefs.

**IT IS RULED** that the motion of Industrial Users to defer the scheduled April 22 filing of legal briefs until after the submission of testimony is denied.

Dated April 17, 2002, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying the Motion of Industrial Users to Modify Procedural Schedule on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated April 17, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.